

(Translation of the Arabic Original)

Investment Banking Services for Egypt

SYNOPSIS OF THE REGULATING LAWS

Of

THE CAPITAL MARKET

And

JOINT STOCK COMPANIES

Complied by

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In connection with round-tables organized by the PEO, USAID and IBTCI dealing with the laws regulating companies in Egypt this memorandum is offered as a synopsis of the legal and regulatory framework governing the activities of the capital market in Egypt as per law No (95) of the year 1992 and its executive regulations.

Additionally, the Companies Law No. (159) of the year 1981, its executive regulations and the Investment Guarantees and Incentives Law No (8) of the year 1997, its executive regulations, are discussed.

These are the primary laws governing operations on the capital market; as they regulate the establishment of joint stock companies and consequent issuance of securities and their circulation in the market.

Also considered are the complementary laws, economic and financial regulations which create the general framework for investment in Egypt. For the convenience of the reader a more complete list of laws and regulations bearing on companies, the capital markets and privatization is presented in an attached annex.

For instance, the law of the public enterprises sector is the law governing the companies of the public enterprises sector which permitted the circulation of their shares. In order to be transferred to the private sector whenever the public sector shareholding is less than 50%, such thing was prohibited in the public sector law No (97) of the year 1983 which prohibited the circulation of the shares of a public sector company.

In consideration of the limited time available today and with regard to topics for discussion, this memo focuses on primary points, as follows:

1. Types of the joint stock companies & Issuance of securities:

- The private joint stock companies,
- The public joint stock companies,
- Public subscription,
- Closed subscription,
- Cash capital and In-kind capital,
- Data and basic formalities & procedures to establish a joint stock company.

2. Shares and their types:

- Constraints (restrictions) on the circulation of shares.
- Purchase of a company to its shares.
- Mortgaging of securities.

3. Companies operating in the field of securities.

4. Stock-exchanges.

5. The governmental supervisory bodies:

- The capital market Authority.
- The companies Department.
- Investment Authority.

1. The settlement of the disputes of the capital market:

- Complaint.
- Arbitration.

Types of Joint Stock Companies in Egypt And Issuance of Securities

Preamble:

Securities are issued in what is called the primary market, which is considered the issuing market. Trading of such securities among buyers and sellers, occurs on the so-called secondary or trading market.

Securities are issued by joint stock companies.

They may be:

- shares of equal value representing a pro-rata share of the company capital upon establishment or of a capital increase;
- bonds or finance shares.

Finance shares represent a debt of the company which entitles the owners of the shares to receive returns or declared annual interest on them.

Hence, it is necessary to know the types of joint stock companies in Egypt which issue these securities and the different regulatory governing them, as well as other regulations that govern their dealings in the stock market.

Joint stock companies in Egypt are divided into two major types as follows:

- Private joint stock companies and,
- Public joint stock companies.

Private Joint Stock Companies

- 1) These may be established according to the provisions of the joint companies law No (159) of the year 1981 and its executive regulations and as per the specified form.
- 2) They also may be established in according to law No (8) of the year 1997 governing Investment Guarantees and Incentives and its executive regulations and as per the specified form.

(Law No (8) of the year 1997 replaced the Investment law No (230) of the year 1989).

The companies established according to the previous and present investment laws enjoy many guarantees and privileges. The most important of such are that they would be protected from administrative seizure on its funds, that it would enjoy a tax exemption for a period not less than five years and up till ten years.

- 3) They may also be established according to law No. 95, of the year 1992, governing the capital market and its executive regulations. Such companies shall be operating in the fields of securities, brokerage, portfolio management, venture capital, clearing and settlements.

Public Joint Stock Companies

These companies are owned by the state, and are either:

- 1) Public Sector companies subject to law No (97) of the year 1983 governing Public Sector Organisations and Companies and its executive regulations (the entity is to be considered public, when 51% or more of the capital is owned by the state).

The shares of these entities may not be disposed of, except for Banks and Insurance companies in accordance with laws no. 155 of 1998 and 156 of 1998, or the shareholdings of the private sector only,

OR

- 2) Companies affiliated to the holding companies subject to the of law No (203) of the year 1991 on the public enterprises and its executive regulations. (Ownership of the holding company and its affiliated companies must be 51 % or more of the capital).

Such a company is authorised to dispose of its shares by sale to the private sector subject to the law No (159) of the year 1981.

The Companies' Law controls and governs the structure of these companies in all matters not otherwise regulated in the Investment Law or the Capital Market Law.

Public and Closed Subscription of Shares

A joint stock company, whether established in accordance with law No (159) of the year 1981 or law No (8) of the year 1997, or other laws, may be a closed company, in which subscription is confined to the founders or some shareholders only.

The company can offer its shares to the public according to specified formalities as indicated in the law No (95) of the year 1992 on the capital market. The most important requirements being:

- the necessity to obtain approval of the public subscription announcement from the Capital Market Authority before publishing in the newspapers, and
- to name the receiving bank, and
- to fulfil other conditions and provide data required for completion of the subscription announcement.

Cash and In-kind Capital

Every joint stock company should have capital not less than the minimum specified by the law or the executive regulations. Capital requirements depend upon the activity of the company and whether:

- the shares are offered for public subscription,
- it is a closed company,
- the shares shall be of equal capital value.

An in-kind contribution may be paid in lieu of a capital contribution. This may consist of tangible assets such as: lands, equipment, know-how, licenses rights, or usufruct rights.

The valuation of this contribution is subject to certain formalities, primary among them is the requirement to obtain the approval of the verification committee which is formed by the Capital Market Authority. This committee reviews and approves the appraisal of value by experts retained by the contributing shareholders. It may direct the “in-kind contributors” to pay an additional contribution above appraised value in cash or to withdraw from the company.

The purpose of this procedure is to ensure fair evaluation of the in-kind contribution; determine its equity-value in shares, impose conditions upon ownership of those shares, and protect the financial interest of the other shareholders.

It is obvious that the capital contribution may limited to the cash only, but it may not consist of in-kind contribution alone. This is a critical point to bear in mind if the company offers its shares for public subscription.

It should also be noted that an Investment Fund’s capital may not include contributions in-kind.

The Basic Data for Establishing Stock Companies:
The Investment Law, Company Law
The Capital Market Law and Procedures for Issuing Securities

The Founders: Shall not be less than 3, either individuals or legal entities.

Articles of Association & the Statutes: Shall be prepared according to the form attached to each law.

Percentage of Partnership or Shareholding: Such percentage shall be determined for each founder & there are no restrictions regarding the said percentage.

The Name of the Company: It shall be derived from its objectives & shall not be similar to another company's name.

The Objectives of the Company: Shall be within the frame determined by the law & its executive regulations.

The Investment Contributions: Shall be appraised to the closest feasible amount.

Initial Capital

Authorised Capital: Shall not exceed five times the issued capital.

The Issued Capital: Including the in-kind portion shall be deposited in the bank to proceed the founding procedures (the paid amount for the cash portion shall not be less than 10% of the capital & within 3 months such percentage shall be 25%).

The Nominal Value of Shares: The minimum value of each share is 5 L.E.

The Board of Directors: May be formed of at least 3 shareholders and two expert members may join the board; a legal entity may be represented by one or more members.

The Auditor: Shall be selected from those who are authorised to audit joint stock companies.

The Legal Counsellor: Shall be selected from those listed to practise before the court of Appeals, the counsellor shall sign the articles of association.

Agent for Founders: The founders shall select one of them, a lawyer or an accountant to exercise the founding procedures with the competent authorities & to sign for & on behalf of

them till the continuation of such procedures, then to transfer the company to the board of directors.

Public Subscription: The public subscription statement Announcement shall be registered & affirmed by an auditor & the capital market authority.

The Articles of Association & the statutes of the company shall be submitted with the public subscription announcement.

Appraisal of In-kind Capital Contributions:

In-kind contributions may be made to the initial capital. A preliminary report regarding such appraisal shall be prepared, and a committee from the Capital Market Authority shall verify such appraisals, and a fee shall be paid that usually does not exceed ten thousand Egyptian pounds.

Applications shall be submitted to:

- 1) Companies Division, Ministry of Economy:

In case the company was established according to law 159 of 1981 or in case a company has among its objectives some of the objectives mentioned at the investment law. (Double Activity).

- 2) Investment Authority:

In case the objectives of the company areas determined in the law no 8 of 1997 & its executive regulation.

- 3) Capital Market Authority:

In case a company was established in order to operate in the field of capital market.

Notifying when issuing securities:

The capital market authority shall be notified when securities are to be issued according to article 2 of law no 95 of 1992, & the fees due shall be paid (not to exceed 10 thousand L.E).

Shares

A joint-stock company issues shares as single shares, or in lots of five shares, or a multiple thereof. The nominal share value could vary between a minimum price of five Egyptian pounds, and a maximum price of one thousand Egyptian pounds.

The minimum nominal value of the share is 5 L.E. & it shall not exceed 1000 L.E.

The share certificate shall include:

The name of the company which issued the share, its legal form, the address, its commercial objectives, the duration its existence, its date of registration in the commercial registry, the number of its shares, its initial-capital; also, the type of share issued, its characteristics or restrictions, the share's nominal value, the paid-in amount and the name of the owner (the shareholder).

The shares shall have coupons with serial numbers, and the number of the share & the paid in amount by the subscriber shall be stated thereon.

The shares are to be either nominal shares or bearer shares, if such shares are ordinary (unrestricted) all such shares shall be equal in rights & obligations. Preferential shares may also be issued.

Registered Shares:

Shares that are registered under the name of a specific person, and are traded according to capital market regulations.

Bearer Shares:

Are shares not inscribed with the name of the owner, therefore, the person in possession of the physical share shall be considered the owner, and may be transferred endorsement and delivery. Law No. 95 of 1992 permits companies to adopt in their statutes an article regarding the company's right to issue bearer shares in an amount not exceeding 25% of the total of all shares issued by the company.

The value of such shares shall be paid in full at once, as it shall be impossible for the company to track go the owners of bearer shares after issuance.

According to the law substitution or replacement of a lost or damaged bearer share is possible if the issuing documentation or title is can be established for that share. However, in such case the replacement share shall be registered on the company's books as a substitute and the original deed shall be destroyed.

The right to attend the general assembly of the company: Possessor of bearer shares

The possessor of such shares may attend the general assembly; he may discuss the board of directors' report, the balance sheet, profits & loss accounts, the auditors report, & whatever else which might arise during the meeting, however they cannot vote in such meetings.

The owners of bearer shares may be notified through a newspaper announcement whenever it is required to do so.

The possessors of such shares are entitled to review the document relating to the general assembly, & when such shareholder is desirous to attend such meeting he shall deposit his shares according to the same rules of depositing the registered shares. The names of possessors of bearer shares in attendance at the general meeting shall be entered in a register established for that purpose.

Preferential shares:

The company's statutes may approve the issuance of shares with extra privileges and preferences. Such privileges may regard the voting, the profits, & the distribution of dissolution revenues.

The preferential shares may not be issued unless such right is stated in the company's by-laws along with the rules and conditions regulating their issuance.

Ordinary shares:

Such shares shall be all equal in rights & obligations.

Concessionary shares:

Such shares shall not be issued unless the company is practising an activity concerning the utilisation or concession of a public utility or natural resources which is granted to the company for a specific period of time. Therefore, the company's statutes shall provide for redemption of its shares, before expiration of the company's legal existence. (Such shares are not frequently seen, however, some may yet be outstanding from public projects developed through BOT. financing.)

Restrictions regarding shares' trading:

Restrictions imposed on the disposal of founding and founders' shares, and shares issued against in-kind contributions.

The Companies' Law (art. 45) states that:

Shares issued against in-kind contributions, as well as against contributions of initial capital, shall not be transferable, unless balance sheets, profits & loss accounts, & other documents appurtenant to them shall have been published for two fiscal years and sooner than 12 months from the date of foundation of the company.

During such period, it is forbidden to detach the coupons of the shares, each share shall be stamped with a stamp indicating their kind, date of foundation of the company, and the payments to be effected in virtue of them (the share-coupons)..

Nevertheless, as an exception from the above provision, the transfer of ownership of the shares which was subscribed to by the founders, may take place among founders or from one of the founders to a member of the board of directors in case the shares to be acquired in order to provide it as a guarantee for his (the board member management, or from the latter's heirs to third parties in case of death. The founders shall apply the provisions of such article in case they subscribed to shares representing an increase of the capital prior to the expiration of the period stated above.

Exceptions:

Article 46 of the companies' law is as follows:

“Without prejudice to the preceding article, the subscription certificates or shares shall not be transferred for a higher price, than the value of its issuance, plus - when necessary - the expenses of issuance. This prohibition of transfer shall be effective during the period preceding the registration in the commercial registry and shall apply to subscription certificates, but as for shares the prohibition applies during the interval following the date of its registration till the date of publication of the profits & loss accounts for a full year.

(The law denied the right to transfer of such shares at a value exceeding its value of issuance for reasons of public policy: preventing share-price manipulation, as it is not expected that companies shall achieve profits which justifying increased share-price during the such a period. However, as changes occurred in the market and joint stock companies which engaging in actual business activities thereby achieving reasonable results it became necessary to allow the negotiation of some shares - during the period of prohibition of transfer - with a value higher than their issuance value, but only for actual business purposes.)

Article 46 was amended - by virtue of law No. 159/98 – by adding the following clause to the original article: “That (transfer should be) ...according to the conditions & procedures set forth in a decree of the minister of economy”.

The said decree was issued by number 251 of 1998 and it is as follow:

“Shares shall not be traded against a value which is higher than its nominal value plus -when necessary- the issuing expenses. Such prohibition of negotiation is for the period commencing with the date of registration in the commercial registry until publication of the financial statements for one full fiscal year, however, the shares can be exchanged for a value higher than the nominal value at the issuance date if the following conditions were fulfilled, as it would be verified and attested to by the Capital Market Authority:

- 1) The shares shall be registered in one of the schedules of the stock exchange market (either the formal or the informal).
- 2) The shares shall be registered in one of the depository companies under the category “A”, management of the financial securities records.
- 3) The company shall publish a report in two widely-circulated daily newspapers and at least one of them to be in Arabic. Such report shall include data regarding the founders names, their capacities, their ownership interest; the company’s business purpose and activities, the contracts and agreements which were entered into by the company; the business plan and financial projections for the company as well as the revenues of the public offering.

But in cases of merger and the changing of the legal form of the company, the above mentioned report shall include a statement regarding the past operating performance of the company and the financial position before the merger or the effected change, or inclusion of the financial position of the new activity which transferred to the company, and that for a whole one prior year at least.

Such reports shall be drafted & prepared according to the forms issued by the capital market authority.

Provisions Restricting Trading in Certain Type of Shares or Quantity of Shares

In addition to the foregoing there are other provisions imposed by various laws other than the Companies' law restricting transfer of securities of certain types of companies or according the ratio of the number of shares issued to the initial capital, such restrictions are imposed for reasons of public policy.

Such provisions are:

Article 8 of the Capital Market Law:

Any shareholder, who desires to conclude a transaction resulting in acquisition of 10% or more of the nominal shares in the capital of a company which offered its shares for public subscription, shall notify the company at least two weeks before preceding in (concluding) such transaction.

The company, within one week from the date of its notification, shall provide/forward such notification to each shareholder possessing at least 1 % of the company's capital.

Violating the provisions of the first clause shall result in cancellation of the transaction without prejudice to further prosecution of the parties to it.

The provisions of the previous clauses shall apply in case of conclusion of such a transaction by a board member or an employee of the company, resulting in possession of 5% or more of the company's capital.

The Executive Regulations shall promulgate regulations pertaining to such transactions, and notification procedures.

Further, the Executive Regulation of the Capital Market law stipulates:

Article 59 of the Executive Regulations of Capital Market Law:

Whoever desires to conclude a transaction, resulting in acquisition of more than 10% of the number of nominal shares of the capital of a certain company offering its shares for public subscription, or otherwise offering at least 30% of its shares, shall notify the company thereof, at least two weeks before concluding the transaction.

Such notification shall be by registered mail against acknowledgement by receipt, the notification shall include the percentage of the acquirer's participation in the capital of the company, and he shall attach an explanation of the transaction, particularly: the number and type of the shares which are the object of the transaction, the transaction venue in case the shares are not registered with one of the stock exchanges, and the name and the address of the brokerage firm through which the transaction is performed.

Further:

The company, within one week from being notified shall forward such notification to each shareholder holding at least 1% of the number of the company's share-capital. This notification shall be either personally at the shareholder's recorded address, or via publishing an announcement in two widely circulated daily newspapers, in addition to notification to the stock exchange at which the company is registered.

The foregoing provisions shall apply in the case of a transaction by a member of the board, or employee of the company resulting in possession of nominal shares representing 5% or more of the company's capital,

The said employee or the board member shall not dispose of the shares he possess during the period from the notification referred to in the first clause till the transaction is concluded, or till the period prescribed for concluding the transaction has elapsed.

Article 60 of the same regulations:

Any person notifying the company of his desire to conclude a transaction referred to in the previous article, may conclude it within one month from the notification date referred to in the said article.

He shall notify the company of holding the transaction, within one week from the date of its conclusion.

In case the transaction is not concluded, he shall notify the company within the week following the expiration of the period referred to in the first paragraph, and indicate the cause. If the Transaction shall not have been concluded through the fault of the purchaser he shall bear the costs incurred to notify the shareholders.

See: The decree of the Minister of Economy No. 447 of 1998.

Bank and Credit Law, as amended by virtue of law 97 of 1996, Article (21/ Bis 1):

The percentage of ownership by non-Egyptians in the capital of joint banks & private banks may exceed 49% of the issued capital of any bank, & all other contradictory provisions shall be superseded.

It shall be prohibited to any natural person - except by inheritance to possess more than 10% of the issued capital of any of the banks referred to the first clause except with the approval of the board of the Central Bank of Egypt. Non-compliance with this regulation shall render a prohibited transaction null & void.

If a natural person takes possession, through inheritance, of more that the percentage indicated in the pervious clause, he shall adjust his ownership share according to a decision to be taken by the Central Bank of Egypt within a period not exceeding two years from the date of possession of such an increased share.

The owner of a percentage greater than that percentage stipulated in the law and not adjusted within the required period, shall not exercise rights appurtenant to the number of shares owned in excess of the legal percentage either in the general assembly of the bank, on the board of directors, or in voting for the board members.

Article 5 of law No. 97 of 1996 states:

The provisions of the second clause of article 21 (bis 1) shall not apply to share-holdings which exceed the percentage set by the law at the time of adoption of the law. However, such share-holdings shall not be increased without the approval of the Central Bank of Egypt.

The Law of Supervision and Control on Insurance in Egypt, Amended by virtue of Law No. 156 of 1998:

This law regulates the ownership of shares of insurance companies as follows:

Any natural person or legal entity possessing 5% of the capital of an insurance company or re-insurance company, shall notify the authorities of its ownership within two weeks from the date of acquiring such a percentage. It is forbidden to any natural person to own, unless by inheritance, or legal entity to own more than 10% of the issued capital of an insurance or reinsurance company except with the approval of the cabinet after consultation with the Minister of Economy. Non-compliance with this regulation shall render a prohibited transaction null & void.

A natural person possessing through inheritance more than the percentage indicated in the previous clause, shall adjust his ownership share according to a decision of the appropriate authority within a period not exceeding two years from the date of possession of the excess shares.

The owner of a percentage greater than that percentage stipulated in the law and not adjusted within the required period, shall not exercise rights appurtenant to the number of shares owned in excess of the legal percentage either in the general assembly of the bank, on the board of directors, or in voting for the board members.

These provisions shall not apply to share-holdings which exceeded the percentage set by the law at the time of adoption of the law. However, such share-holdings shall not be increased without the approval of the Prime Minister after consultation with the Minister of Economy.

Investment Law No. 8 of 1997:

According to the Companies' law, it is, as previously discussed, forbidden to dispose of founder's shares until after publication of a company's balance sheet reflecting two full fiscal years. However, the Investment law authorises an exception from the prohibition of share-transfer. This exception applies to companies established according to the Investment law. Such exception shall be authorised upon approval by the Prime Minister. The chairman of the investment authority is delegated to grant such approval.

The Disposal of Securities Owned by a Minor:

Law No.119 of 1952, regarding custody over money sets forth the rights and obligations of a guardian. This law forbids a father, without the permission of a court, to dispose of the real estate or the business-establishment or securities owned by a minor if their value exceeds 300 L.E..

The guardian-ship may not include property given to the minor if the donator so stipulated. The above mentioned restriction shall not apply to property granted, directly or indirectly, to the minor by his father and the father is not obliged to submit a statement of account regarding such donations.

A father may also enter into contract by himself in the minor's name and to the benefit of either contracting party, unless a particular law prohibits such contracts.

Repurchase of company shares

The right of companies to repurchase their shares

The Companies' law, (as amended by law No. 3 of 1998) permits a company to re-acquire its own shares, however, a company having re-acquired its shares shall dispose of such shares to third parties within a year of acquisition or, alternatively, it shall decrease its capital by the amount of the nominal value of such shares. The law also authorises a company to purchase some of its shares for distribution to employees as a participatory-share of profits.

Notifying the capital market authority

If a company re-acquired any of its shares it shall notify the capital market authority of such acquisition.

The company shall in its financial statements or other company publication disclose and mention the number of shares re-acquired, the date of re-acquisition and the ratio of the number of such shares to the issued capital. Re-acquired shares shall be treasury shares; the balance of the shares shall be referred to as: issued and out-standing shares.

Treasury shares shall not be entitled any dividends

Treasury shares shall not have apportioned to them any of the dividends distributed by the company and shall not have appurtenant rights for voting or representation at the general assembly.

Dividends declared to be distributed for the outstanding shares, shall be due and payable as of the date of declaration.

Disposition of treasury shares

A company shall, within a year from the date of re-acquisition of its shares, dispose of such treasury shares or it shall convene, within 30 days of expiration of the one-year period, an extraordinary general assembly for the purpose of decreasing the capital of the company by the nominal value of the acquired shares.

Hypothecation of Securities

Introduction

In Egypt, shares are issued either as physical shares in the form set forth by the Companies' law & its Executive regulations or registered-shares entered in the central share registry which provides an account statement issued by the share-registry in substitution for the physical share.

This system was not used in Egypt prior to the adoption of law No. 158 of 1998, amending the Capital Market law. This amendment authorised the issuance of documents representing

physical shares as a substitute for them. Therefore, the legal procedures required to hypothecate shares are as follows:

Hypothecation of Shares

Article 76 of the Trade Law, as amended by law 655 of 1954 states that:

The (mortgage) pledge which is to be given as a warranty for a commercial debt is to be proved or evidenced by such means of proof and such methods as shall be customary and acceptable in the course of business either among the contractors or among others.

Notwithstanding usual requirements, a hypothecation pledge of registered securities shall be in writing and indicate that it is given as a warranty. The security certificate shall be inscribed with the pledge and the entity which issued the share shall register the said hypothecation pledge in its books and shall also state the seniority of the mortgagee creditor from the date of registration of the hypothecation pledge.

And the promissory notes to be mortgaged against an endorsement on the back to show that “the value is for guarantee”.

Generally, the terms and conditions of provision of security for debt is governed by the Civil Code.

Article 77 states that:

“The mortgagee creditor may not in all cases have a lien on the mortgaged item unless such item were delivered to him or to a third party designated by both contractors and remains in the possession of whomever received it:

Therefore, the following conditions shall be fulfilled when hypothecating physical shares:

- The share shall be issued by the company according to stipulated legal conditions.
- The share shall have an endorsement stating that, it is mortgaged to the mortgagee creditor;
- it shall be signed by the owner of the share or other authorised parties.
- The company that issued the share shall register such mortgage in the shareholders registry.
- The shares must be delivered to the mortgagee or his designee.

Hypothecating shares listed in the Central Depository

As ownership, circulation and transactions, in shares increased Central Depository companies were established in order to safeguard securities and the issuance of statements of accounts. And with regard to the importance of legalising such documents issued according to central depository system either in sale or in purchase, and with regards to all related procedures and transactions, and in specifying the relation between the depository agency and the owner of the shares, and to address the legal problems and disputes that might arise by reverting to the central depository system, while the law en force governs matters related only to actual physical securities, therefore, an accordingly, clause (18) of the Capital Markets Law, was amended, with the provision of such amendment authorizing that the documents issued by the central depository companies be accepted as evidence of ownership in lieu of the physical shares

Article (18), as amended, states that:

In case of registering the securities with one of the licensed custodial companies, the documents issued by such companies shall substitute (replace) the physical shares and such documents shall be used either in dealing, attending general assemblies, hypothecating, enforcing priority rights, or in any other activity prescribed by the executive regulations.

Note: The executive regulations, as of Oct. 1999, have not yet been issued and are still under discussion.

Companies operating in the area of financial securities

As specified by the law companies operating in the financial markets are those engaging in one or more of the following activities:

- Marketing, promoting and covering the subscription to securities
- Participating in the incorporation of companies issuing stocks & shares or in increasing their capital funds
- Venture capital
- Clearing and settlement in securities dealings
- Formation and management of securities in portfolio and investment funds
- Stock brokerage
- Other activities connected with the area of financial securities as determined by the minister of economy subsequent to the approval of the board of the Capital Market Authority.

Promoting and underwriting share-subscription

Activities related to promotion and underwriting subscription to securities shall comprise the following:

- Managing operations related to promoting and the underwriting of financial securities, and solicitation of investors, and all procedures related thereto concerning advertising in the media.

Subscriptions to securities through private-offerings or public subscription may be also re-offered to the public by public subscription. They may also be offered other than by public subscription, with the same conditions and terms as set forth in the approved subscription announcement, within a period of at most one year from the date of approving such announcement, at a price not restricted by the nominal value of the share.

The entity offering such shares shall be informed by the issuing company of all modifications or changes affecting the shares during the preceding year in order to take procedures & actions deemed suitable in that regard.

The company shall perform its activities according to the provisions of the law and the decrees and executive regulations implementing same, and also according to the agreement signed between the company and the concerned parties.

The Capital Market Authority shall be notified of such agreement and be provided with a copy of such agreement. The Capital Market Authority should forward its comments and

remarks over the agreement to the company within 30 days from the date of receiving the agreement.

Founding companies

A company shall be considered to be engaged in the business of establishing companies that issue securities or increasing the capital of established companies:

- If the primary business of the company is promoting secondary subscriptions
- If the company, severally or jointly with its founders possesses more than 50% of the capital of five or more companies (either joint stock companies or partnership limited by shares)
- If the company, severally or jointly with its founders control shares or rights sufficient to form the board of directors of five companies or more (either joint stock companies or partnership limited by shares).
- If the company actually exercises the activity of founding joint stock companies, or partnership limited by shares, or the activity of increasing their capital, and such activities constitute the primary business activity of the company.

Venture capital

The activities of venture capital include financing companies which issue securities, supporting such companies by provision of technical & administrative services; participating in business-projects or the establishment and development of business-projects for the purpose of transfer to joint stock companies or partnerships limited by shares and that when said companies & projects are considered high-risk, or suffering from inadequate shortage in financing.

The required legal form

Companies operating in the field of securities shall assume the form of joint stock companies or partnerships limited by shares.

Such companies shall keep books & registers as necessary for exercising their activities and also shall keep books and records in accordance with and as set forth in the Executive Regulations.

The permissible cumulative value of transactions carried out by companies dealing in securities - with respect to each activity - shall be limited by the amount of company's capital and the amount of reserve deposit paid by it in accordance with the rules and regulations to be set by the **board of the appropriate authority**.

The amount of the reserve deposit shall be determined with consideration to the companies activities, the amount of its business, the risks represented in assuming such activity, as well as the debts and other obligations of the company.

Establishing & licensing

Companies operating in the field of securities, without regard to whether they are organized under Egyptian or foreign law shall not carry on business except in accordance with the provision and conditions prescribed in the Law 95, of 1992, and its Executive Regulations.

The founders or the managing director of such a company may before proceeding to organize it, submit a request to the Capital Market Authority for preliminary approval to conduct business.

The approval shall be issued in light of the capital market's need such activity or its need for founding a company to exercise it.

In case of multiplicity of objectives to be exercised, these activities shall not be contradictory among them selves.

The applications shall be submitted - if the required documents & attachments were complete - to the committee formed for such purpose at the Capital Market Authority.

The committee's decision to reject the application shall be issued with justifications and for stated causes.

The committee's resolutions shall not be final except after being approved by the head of the Authority.

The concerned parties shall be notified of the committee's decision within 15 days from its date of issuance.

The business activities related to the field of securities shall not be undertaken before obtaining the required license from the Authority.

The companies licensed for such activities shall be registered in a special schedule at the Authority. Each company shall be given a serial number. The type of the license granted to the company shall be defined, with data regarding the company, and it's capital, as well as the names of the board members, the directors, and the branches of the company.

Each company granted such license shall be given a certificate of this license stating on its face: the type of business activities licensed and allowed to be undertaken by the company. The company is obligated to note the activities permitted by the license in its business correspondence.

Stock Markets

Preamble

Securities shall be registered at and transferred through the stock market.

The Cairo & Alexandria Stock Exchanges, are governed by Law No. 161, of 1957. Prior to enactment of those laws, the stock markets were subject to Law 31 of 1933. It should be noted that both of these exchanges were previously considered active markets and were legally established. However, after adoption of the Nationalisation Law of 1961, the title & ownership of the majority of shares in joint stock companies were confiscated & transferred to the state. Moreover, the state prohibited the right to trade in stock-shares.

After the enforcement of the Nationalisation Law only insignificant equity shares were left in the possession of individuals.

As a result both of the stock exchanges were considered non-existent. There were no shares available to be circulated, moreover, legal restrictions in the Companies' Law, prohibited individuals from establishing joint-stock companies the sole source and mechanism for creation of shares.

Later, as the state adopted new economic policies to liberalise the economy by enacting the Investment Law No.43 of 1974, companies, subject to that law, could be established as closed companies. The Investment Law eliminated the legal restrictions in the Companies' Law No. 26 of 1954, but only with regard to the certain specified investment projects.

A material legislative amendment was adopted by issuing Law No. 159 of 1981, regarding Joint Stock Companies, and its Executive Regulations. Such amendments resulted in an increase in the number of investors desiring to establish joint stock companies. Then Law No. 203 of 1991, regarding Public Enterprise Companies was issued with its Executive Regulations. This law authorized the sale of such companies including offering shares to the public. In order to regulate and organise the Capital Market, Law No. 92 of 1995, was issued replacing Law No. 161 of 1957, regarding stock exchanges.

Listing

The registration of securities in the stock exchanges' schedule shall be done upon a request from the entity that issued such securities. Securities may be registered or deleted from the schedules by virtue of a decree from the management of the stock exchange, according to the rules drafted by the board of the Capital Market Authority. There exist two schedules:

Formal (official) records

In this schedule shall be registered:

- 1) The shares of publicly subscribed companies which fulfil the following conditions:
 - The percentage of the nominal shares which to be offered for public subscription shall not be less than 30% of the total number of shares.
 - The subscribers shall not be less than 150 whether foreign or Egyptian.

- The number of shareholders shall not have been fewer than one hundred for any cumulative three- month period within the same fiscal year. In the event that the required number of shareholders shall be less than one hundred in any such three-month period, the shares of such company shall be deleted from the formal schedule and to be registered in the informal schedule.
- 2) Debentures, bonds, & other securities may be offered for public subscription by joint stock companies, and partnerships limited by shares; however such companies shall fulfil the above mentioned conditions.
- 3) Securities issued by the state (the government) to be offered for public subscription.
- 4) Stock and other securities of public sector companies & public enterprises sector companies.

Non-authoritative records

In this schedule shall be registered:

- Shares & other securities which does not fulfil the registration conditions of the formal schedules
- Foreign securities

Trading in Shares

Trading in registered securities shall take place only on the stock exchange with which the security is registered; otherwise a transfer shall be deemed void.

Regulations shall be disseminated by the stock exchange concerning transactions in unregistered securities which shall be effected according to the rules drafted by the Capital Market Authority.

The stock exchange shall provide the Authority with information regular reports as set forth in the Executive Regulations.

Dealings in registered securities shall be through licensed brokerage companies, otherwise the transaction shall be deemed void. Brokerage companies guarantee the integrity of a transaction. The Executive Regulations regulate transactions and procedures permitted or prohibited to undertaken by a brokerage company.

The stock exchange shall maintain a register of companies licensed to engage in business in the field of securities, and actively undertaking such business. A registration-fee shall be charged in the amount of 10,000 L.E. Additionally an annual subscription fee shall be charged amounting to 1% of the capital of the brokerage company to a maximum of 5.000 L.E.

The chairman of the stock exchange may ban trading in securities at upon if he has reason to believe that the bid-offer range is a result of or facilitates price manipulation.

He may also cancel transactions completed in violation of the law, regulations, and decrees, or if they were executed at unjustified prices.

Moreover, the chairman of the stock exchange may suspend dealing in a certain security if the continuation of trading might harm the market or the dealers. These restrictions may be imposed by the chairman at such times as he deems appropriate.

In case of exigent circumstances, the chairman of the stock exchange may declare a minimum price and a maximum price for certain securities taking into consideration the closing prices of the securities at the close of trading on the day prior to imposition of a maximum or minimum price. Such prices shall be binding on all transactions by all dealers on all stock exchanges.

The appropriate minister shall be informed of such action, by the chairman of the stock exchange, at the time of introduction of price limits. The minister may prohibit the imposition of the limits and determine pricing policy. He may also supervise transactions under price-limits the stock market and may issue a orders determining the procedures to be followed while trading in securities subject to price limits.

Brokerage Companies and Fees

The appropriate minister shall issue a decree - upon the suggestion of the board of directors of the Capital Market Authority - regulating brokerage commissions & the maximum fees for the services provided in effecting transactions on the stock exchanges.

The minister shall also determine the amount of fees to be charged for registration of securities with the stock exchange. Regarding securities listed in schedule A of article 16 of Law 95 of 1992, such fees shall not exceed 5,000 L.E. annually for each issuance. The said fees shall not exceed 3,000 L.E. if levied on securities registered in Schedule B. Registration fees shall not be due in case the state is the entity which issues such securities.

Additionally, the Capital Market Law states that both Cairo & Alexandria stock markets shall continue their activities with the status of legal entities which was granted to them at the date that law was adopted and also in accordance with Presidential Decree No. 51 of 1997.

The Chairman of the Stock Exchange

The chairman manages all business-affairs of the stock exchange. The chairman shall represent the stock exchange before court & third parties. Moreover, only the chairman of the stock exchange or his designee shall be authorised to sign on its behalf .

The chairman is to be selected from a group of experts in the fields of finance & economics. He shall be appointed by the Prime Minister for a term of 3 years, which may be repeated. In the absence of a chairman appointed in due course the head of the Stock Exchange Committee shall serve as acting- chairman until such time as the Prime Minister shall issue appoint a chairman by decree.

The stock exchanges' board of directors, headed by the chairman, shall be formed from the following members:

- A representative of the central bank (selected by the bank's governor).
- A representative of the Capital Market authority (selected by the chairman of the Capital Market Authority).
- Other bank's representatives to be elected according to the rules & regulations issued by the board of directors of the bank's union.

- 6 members, as representatives of the companies operating in the field of stocks & shares they shall be elected according to the rules set by the minister of economics & international co-operation.

The board's chairman may invite such experts as he deems necessary to attend board meetings, however they are not entitled to vote.

The term of board-membership is 3 years, the term may be repeated.

Duties of the board of directors

The board of directors shall formulate policy and fulfil the following duties:

- Issue decrees & rules in order to guarantee the validity & stability of trading.
- Issue regulations & detailed decrees to regulate the administrative & financial affairs, also to regulate the employees' affairs with due regard to privileges previously granted to them; to draft the internal regulation for the stock exchange.
- To form the required committees for listing the securities in the schedules, supervising and confirming the good order of the market and trading.
- Drafting rules regarding the employment of experts.
- Approving the draft of the annual balance sheet & the financial statements.
- Accepting donations & approving loans to accomplish the objectives of the stock exchange.

The board of directors may delegate some of its duties to one of the committee or to the chairman. The board also may designate one of its members to accomplish a particular mission.

Board Meetings

The stock market's board shall convene upon the invitation of the chairman at least once every two weeks. The chairman may invite the board to convene if at least four board members request.

Such meetings shall be valid if the majority of the members attend and resolutions shall have been taken according to the majority vote of those in attendance. In case of a tie-vote votes the issue shall be decided by the vote of the chairman.

The Role of Capital Market Authority

The chairman of the Capital Market Authority shall be notified of the board's resolutions. If the chairman shall not challenge a resolution within fifteen days of the notification, it shall be adopted and enforceable. However, if a protest is made against the resolution it shall be returned to the Capital Market's board within the same 15 day period along with a statement of reasons for the protest. The protest shall be reviewed by the board. If the board shall again adopt the resolution by vote of three quarters of the majority of its members it shall be then enforced.

The chairman of the stock exchange shall notify the chairman of the Capital Market Authority of violations of laws, decrees, regulations and reporting requirements or activities committed by brokerage companies and other companies operating in the field of stocks. Such

violations shall be subject to the penalties mentioned in articles (30,31) of Law 92 of 1995. Complaints of violations and penalties shall be subject to article 32 of the this law.

Regulatory Bodies

According to the law there are 3 governmental bodies which are entitled to supervise joint stock companies and the Capital Market; these are:

- The capital Market Authority
- The companies Departement
- The Investment Authority

The Capital Market Authority

The Authority's legal status:

The Capital Market Authority is a public authority, which is an affiliate with the Ministry of Companies and Foreign Trade. It is located in Cairo.

The appropriate minister may with the consent of the board of the authority issue a decree to establish offices and branches for the authority both in the country or abroad. Such entities shall embody the government's authority in supervising the capital market.

The jurisdiction and regulatory scope of the Authority:

Regardless of provisions stated in any other law, the Authority shall implement and execute the provisions of the Capital Market Law, its Executive Regulations, and decrees predicated upon their provisions. The authority may adopt whatever procedures are to be deemed necessary for accomplishing its purposes and objectives; particularly:

- Organising and developing the Capital Market; the Authority's opinion shall be considered when drafting new laws regarding the Capital Market
- Organise and supervising seminars and courses to be held for those who are working or intending to work in the capital market field
- To supervise and observe that sufficient information and statements regarding the capital market is provided clearly and frankly in particular with regard subscription announcements which shall be registered according to law
- Supervising the capital market in order to assure the validity of transactions; to assure that all the transactions shall be free from fraud, deception, cheating, self-serving or illusory character
- To implement the provisions of the law and the related decrees and regulations
- Inspecting financial statements
- Investigating complaints upon their submission and to prohibit implementation of the General Assembly's resolutions if it shall have been proven that such resolutions were issued in favour of a particular category of a company's shareholders or were issued to the detriment of a particular category of the shareholders
- Rescinding transactions executed in violation of laws, regulations and decrees, or rescinding transactions undertaken at an unjustified price.
- Prohibiting activity practised without licenses required by Law 92 of 1995.

A company having violated any of the provisions of applicable law or executive regulations or any resolutions of the board of directors of the Authority or operating without a license may be suspended from conducting business by a written decree from the head of the Authority.

The causes of such suspension shall be included in the decree and the suspension period shall not exceed 30 days.

The Board of Directors

The Authority's board of directors is responsible for managing its affairs and directing the various business matters of the authority. The board may adopt whatever final resolutions it deems necessary for exercising the jurisdiction of the Authority to accomplish its purposes and objectives; in particular:

- To draft the policies by which its regulatory authority shall be exercised and to implement related programs and plans
- To draft rules regarding inspection and supervision over the companies subject to Law 92 of 1995
- To set fees for the Authority's services
- To draft rules regarding use of experts and contracting for consultants
- To approve the annual budget

The board may delegate or one or more of its members to perform a certain assignment.

Extraordinary Measures

The board of directors of the Authority, in case of extraordinary circumstances which might threaten the stability of the capital market or shareholder's interests, shall take one of the following actions:

- Issue a warning to the affected company
- Ban a company from practising all or some of the activities permitted by its license
- Demand that the chairman of the affected company convene its board of directors to consider, in consultation with one or more members of the Authority, the violations attributed to the company and to take appropriate actions to eliminate them.
- Appoint a supervisory member to the board of the company for such period of time as determined by the board of the Authority. Such member shall participate in the discussions of the board and may discuss remedial resolutions.
- Announce the dissolution of the affected company and appoint a receiver to manage the company temporary until such time as a new board shall be appointed by the Authority..
- Obligate the company to increase the value of the its mandatory insurance reserve

The Authority's board of directors shall be comprised as follows:

The chairman of the authority
President
Vice president
Deputy chairman
Deputy governor of the central bank
Member

Further, there shall be,

Four other expert members to be appointed by decree by the Prime Minister. Such appointment shall be for two years, able to be renewed. The appropriate minister shall suggest and recommend qualified candidates to the Prime Minister.

The chairman of the authority and his deputy shall be selected and appointed by the President of the Republic by presidential decree. Such appointment shall be for 3 years, and may be renewed.

The Companies' Administration Department

The Companies' Administration department shall be the competent administrative body in implementing and executing the provisions of Law No.159 of 1981, and its Executive Regulations. In addition to its power to found companies, the law grants the Companies' Administration Department the power to supervise inspect companies as follows:

Supervision

The law grants to technical employees of the third degree investigative judicial capacity. Such employees shall be selected and agreed upon by the appropriate minister together with the Minister of Justice. These employees shall investigate all the suspected felony or misdemeanour violations according to Law No. 159 and its Executive Regulations

Further:

They may review the records, books and any other business document either at the company or elsewhere. The directors and officers of the company shall co-operate with and provide all information necessary to aid the investigation.

The department may investigate any complaint submitted by a shareholder or any other interested person.

The law permits company department investigators to attend general assembly meetings of the companies upon the approval of the chairman of the department. They shall not be permitted to take active part in the general assembly and shall not be entitled to vote. Their mission shall be to record & register the meeting, and make a written record and commentary.

Any person having an interest may apply to the competent administrative body to allow him to review the documents, records, and minutes of meeting, and reports relating to the company, and obtain data and information duly authenticated by the Companies' Administration Department. However, the department may deny such request if the publication of such information might cause harm to the company or any other entity or if such data may disturb the interest of the country.

The companies investigators may request the general assembly of the company be convened specifically in the case that the board of directors of the company shall not timely convene the general assembly in the manner otherwise set forth in the law.

The company department may register and affirm the minutes of a general assembly meeting.

Inspection

The companies department and the shareholders, who possess at least 20% of the capital of a bank, or at least 10% of the other joint stock companies, may request an inspection of alleged violations attributed to any member of the board or a company's auditor. The inspection may be requested upon evidence of any such violation.

Such request shall be submitted to the inspection committee of the Companies' Administration Department and shall have attached any evidence of the violations. The shareholders who submit such a request must deposit their shares with the inspection committee, and should remain in the custody of the Companies' Administration Department until a resolution is reached.

Following a hearing, which shall be held in a secret session, of the applicants, the board members, and the auditor, the committee may demand an inspection of the company's books and business.

The committee may delegate one or more experts to assist the inspection and it shall determine an amount to be deposited to defray expenses. The inspection shall not commence until the deposit is received.

The warrant granted for inspection may include permission to review documents and records of another company if they relate to the company subject to inspection.

The law obligates the company's board, officers, & directors to provide the inspectors with all records, documents, and papers related to the company as well as all other information required. Penalties for non-compliance with this obligation are provided for in article 163 of Law 159 of 1981.

The inspector may question under oath any person involved with the company's affairs. The inspector, prior to conclusion of his investigation shall submit a detailed report of his findings to the committee.

If the committee determines that violations have not occurred it may order the publication, at the expense of the applicants, of the whole report or its findings in a daily newspaper. The publication of the findings of the committee shall not prejudice the right of the company to pursue legal recourse against the applicants.

If the committee affirms the existence of the alleged violations against the board members or the auditors of the company it shall take prompt action to convene the general assembly. In such a case the chairmen of the general assembly shall be the senior member of the competent administrative body or any other employee to be selected by inspection committee.

Moreover, in such a case, the company shall pay all the fees & expenses of the inspection. The company shall have legal recourse against those persons found to be responsible for the violations in the total amount of expenses and penalties.

The general assembly may adopt a resolution dismissing the culpable board members in addition to filing a liability claim against them. Such resolution shall be valid if agreed upon by partners or shareholders possessing fifty percent (50%) of the capital of the company remaining after deducting the value of the equity of the culpable board member from the total capital of the company.

The general assembly may appoint new auditors and may file a claim against the culpable auditor. The dismissed board members shall not be eligible for re-election until five years have elapsed since the date of their dismissal.

The Investment Authority

The investment authority is the competent administrative body for implementing and executing Law No.8 of 1997 and its Executive Regulations. This law states that investment guarantees and incentives related to the establishment of companies shall be directed by the Investment Authority.

Companies must invest in one of the following fields, in order to qualify for the benefits conferred by this law:

- Reclamation & cultivation
- Livestock, poultry or fish production
- Industry, mining, and transportation
- Oil services
- Housing and tourism projects
- Infrastructure
- Hospitals
- Financial leasing
- Underwriting subscription to securities
- Venture capital
- Computer technology
- Projects sponsored by the Social Funds for Development.

The cabinet may add any other fields to the above.

The above mentioned law grants the Investment Authority all of the powers and jurisdiction which were previously granted to the Companies Department for implementing Law 159 of 1981, to be exercised for the establishment of companies according to law 8 of 1997.

Arbitration & Settlement of Disputes **Provisions of the Capital Market Law**

Because of the technical nature of the trading on the financial markets Arbitration Courts were established to resolve disputes arising from securities' transactions. These courts are charged with resolution of disputes arising under administrative decrees issued either by the Minister of Economy or the Capital Market Authority as well as the referring the disputes referred to arbitration by parties to a particular transaction.

Complaints committee

The Complaints Committee shall be constituted upon decree of the competent minister. The chairman of the committee shall be a vice president of the Council of State. The committee shall include among its members two councillors from the Council of State, to be selected by the council, and a third member to be selected from among the senior administrative staff at the Capital Market Authority. This senior staff-member shall be chosen by the chairman of the Authority. A fourth member, with expert qualification, shall be chosen by the competent minister.

The Powers of the Committee

The committee shall be empowered to investigate complaints arising from issues relating to administrative orders issued either by the minister or the Authority. Investigation of these complaints shall be according to the law, its executive regulations and related regulations pertaining to implementation of the law.

Duration

Complaints shall be submitted to the committee within thirty days from the date that the concerned party received an order, or from the date he received notification of it. Examples of orders upon which a complaint may be based are:

- Evaluation decrees appraising the value of in-kind capital contributions
- Decisions disallowing the company registration
- Decrees deleting company registration and decrees banning a representative of a brokerage company from undertaking transactions in the stock market
- The Capital Market Authority's order disallowing registration of an investment broker or adviser which either eliminates his registration or prohibits him undertaking business transactions in the financial markets.
- A decree disallowing the registration of a union of share-holding workers. (Complaints from such decrees shall be filed within 30 days from the date of notification)
- A decree which disbands a union of share-holding workers, (Complaints from such decrees shall be filed within 30 days from the date of notification)

All complaints, except as noted above, shall be filed within fifteen (15) days from the date of notification, or from the date the concerned party becomes aware of it.

Example of such cases are:

- The refusal to license or to establish a company
- Orders issued by the Authority's board of directors in extraordinary circumstances which might threaten the stability of the capital market, threaten the interests of the shareholders, or the dealers.
- Decrees adopted to dismiss a board member or a member of the Investment Funds Department, filed within 60 days of the date of the decree

Decisions of the Complaints Committee shall be binding and final. Appeals for the invalidation of such decisions shall not be accepted unless the decree was complained against before the competent committee.

Appeal Procedures

The Executive Regulations of the Capital Market Law mandate the following procedures when filing a complaint:

Submitting the complaint:

The complaint shall be submitted in one original & six copies; it shall include the following data:

- Name, surname, occupation, and address of the appellant.
- The date of issuance of the decree appealed from, and the date the appellant was notified by delivery of it, or learned of its issuance.
- The subject of the petition of appeal and the reasons upon which it is predicated, as well as the documents evidencing the complaint shall be enclosed.
- The receipt indicating the payment of the fees prescribed in Article 211 of the executive regulations.

Fees

An appellant from an administrative decree issued by the minister or the authority, shall deposit in the authority's treasury an amount of 5,000 L.E. to be refunded to him, after deduction of 10% from such amount as administrative expenses, in the event of a favorable disposition of the appeal by the Complaints Committee.

The Complaints Office

A Complaints Office shall be established at the Authority. The Complaints Office shall be provided with staff chosen from among the Authority's employees. It shall be the duty of such employees to receive the petitions of appeal and record them on the date of their delivery in a register which shall be kept for that purpose,

The office shall return to the appellant a copy of his petition which shall have been inscribed with a registration-number and the date of entry in the register.

Investigating Petitions of Complaint

The Complaints Office shall, upon receiving it, submit the Petition of Complaint, to the Committee's chairman who shall further submit it for discussion by the committee. The Complaints Committee shall have the authority to require from the parties all explanations it deems necessary as well as to require submission to the Committee for examination of all documents it may require.

The Committee shall issue a final decree in the matter of the appeal within 60 days from the date on which the Petition of Complaint was submitted or the date of submission of all evidence it has demanded for examination in relation to the case.

The Decision of the Complaints Committee shall be binding and final.

Notification

The Complaints Office shall notify the parties concerned by delivery to them of a certified-copy of the Committee's final ruling including the reasons for its decision. Delivery shall be by registered mail against acknowledgement of receipt.

Arbitration

Arbitration is mandatory. The law obligates dealers in securities to settle disputes regarding the arising from transactions governed by the Capital Markets Law exclusively through arbitration. Claims arising out of capital market transactions may not be filed in other legal venues prior to having been referred to arbitration.

The Arbitration Tribunal shall be established by a decree of the Minister of Justice. The presiding arbiter of the Arbitration Tribunal shall be a vice president of the Court of Appeals. Additionally, each party to a dispute shall select one arbiter. If the defendants or the claimants are more than one person, each of them shall also appoint one additional arbiter.

In all cases, the arbitration award shall be binding and final as to the parties unless the Court of Appeals shall enjoin its execution. Appeals from decisions of the Arbitration Tribunal may be undertaken before the competent Court of Appeals.

Fees & Expenses

The applicant for arbitration when submitting the arbitration request shall deposit in the treasury of the Capital Market Authority fees & expenses due to defray the cost of the arbitration hearing. Fees shall be levied in accordance with the following schedule in relation to the amount or value of the claim under dispute

<u>The amount in dispute</u>	<u>Fees</u>
Up to L.E. 50.000	L.E. 2.000
Over L.E. 50.000 Up to 100.000	L.E. 3.000
Over L.E. 100.000 Up to 200.000	L.E. 4.000
Over L.E. 200.000 Up to 600.000	L.E. 5.000
Over L.E. 500.000 UP to 1.000.000	L.E. 6.000
More than L.E. 1.000.000	L.E. 10.000

If the value of the claim under dispute and subject to arbitration, is not determined or stated, the fee levied upon application to the Arbitration Tribunal shall be L.E. 5.000.

The Arbitration award shall determine the party who shall ultimately pay the fees and expenses of the proceedings.

The Arbitration Petition

The arbitration request shall include the names of the parties, the names of their legal representatives, the name of their arbiter(s), the subject of the dispute, and a description of the claims. All the documents evidencing the claims shall be enclosed, also the receipt evidencing the payment of the arbitration fees.

Commencement of Hearings

The presiding arbiter shall, within ten days from the date of appointing the arbiters by the parties, determine the date of the first session and the place of the arbitration hearing.

The Arbitration Office shall notify all parties with the date and place of the hearing at least a week before it shall be held.

There shall be established a fully-equipped Arbitration Centre on the premises of the Capital Market Authority.

Methods of notification

All documents and notifications shall be delivered to the parties to an arbitration proceeding by ordinary mail or registered mail against an acknowledgement of receipt.

Adjudication of the Dispute

The arbitration tribunal shall adjudge the dispute promptly and without considering the rules of Civil and Commercial Procedure except as those rules shall apply rights and guarantees relating to fundamental procedures assuring Due Process and fair adjudication of the case. A final decision and award shall be issued within a month of the final hearing of the proceedings.

If any party, having received notice of the arbitration hearing, shall fail to attend a session, the Arbitration Tribunal may adjudge the disputes in the absence of such party.

The Arbitration Office

An arbitration office shall be established in the premises of the authority, such office shall be to receive the arbitration request & to register such requests; within a week from the date of retrieving the request, the office shall notify the other party with a copy of the request in order to select an arbitrator, and that to be within two weeks from the date of his notification. If the office was not informed by the name of the arbitrator, his capacity & his address during such period, the minister of justice shall in that case select a councillor from one of the judicial authorities as an arbitrator representing that party.

The arbitration award

The award shall be issued according to the majority vote of the tribunal.

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The Laws of Investment, Capital Market and Companies and Related Others

- 1) The constitution of A.R.E.
- 2) Trade law.
- 3) Joint stock companies law No. 159/8 1.
- 1) The executive regulations of the companies' law that was issued by the decree of investment affairs minister No. 96/82.
- 2) Public enterprises law No. 203/91.
- 3) The executive regulations of the public enterprises law - issued by the decree of the Prime Minister No. 1590/91.
- 4) Investment incentives and guarantees law No. 8/97.
- 5) The executive regulations of law No 8/97 issued by the decree of the Prime Minister No 2108/97.
- 6) Financial leasing law No. 95/95.
- 7) The executive regulations of law 95/95 which was issued by the decree of the minister of economy No.846 of 1995.
- 8) Income tax law No. 157 of 1981.
- 9) The executive regulations of law No. 157 of 1981 issued by the decree of the minister of finance No. 164 of 1982 amended by virtue of decree No. 898 of 1994 (unified tax).
- 10) The law of the central authority for accounting No. 142 of 1988.
- 11) The capital market law No. 95 of 1992.
- 12) The executive regulations of law 95 of 1992 issued the decree of minister of economy No. 135 of 1993.
- 13) The public sector companies & authorities law No. 97 of 1983.
- 14) The executive regulation of law 97 of 1983 which was issued by the presidential decree No. 90 of 1985.
- 15) The commercial registry law No. 34 of 1976.
- 16) The executive regulations of law 34 of 1976 issued by virtue of decree minister of trade No. 946 of 1976.
- 17) The commercial chambers law No. 189 of 1951 & its executive regulations.
- 18) Law No. I of 1973 regarding touristic establishments.

- 19) Law No. 38 of 1977 regarding regulating the tourism companies.
- 20) Law No. 59 of 1979 regarding new urban communities.
- 21) Law No. 55 of 1951 regarding trade names.
- 22) Law No. 388 of 1953 regarding trade books.
- 23) Law No. 38 of 1994 regarding foreign currency & its executive regulations.
- 24) Law No. 143 of 1981 regarding desert lands & its executive regulations.
- 25) Law No. 10 of 1981 regarding supervision on insurance.
- 26) Law No. 163 of 1957 regarding banks & credit & its executive regulations.
- 27) Law No. 120 of 1975 regarding the central bank of Egypt & its executive regulations.
- 28) Law No. 205 of 1990 regarding confidentiality on bank accounts. - The presidential decree No.51 of 1997 regarding the provisions regulating the management of Cairo & Alexandria stock markets & the financial affairs of both stock exchanges.

Investment Banking Services for Egypt

GUIDELINES FOR ESTABLISHING

A MODEL DATA ROOM

**IBTCI/USAID
Investment Banking Project Team**

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I. DEFINITIONS**Adjusted Replacement Value**

One method of determining the value of an affiliate company's assets is the replacement cost method adjusted for applicable depreciation and obsolescence.

Advertising for Bidders

Once the affiliate company has been prepared for sale, the Holding Company will announce its invitation to prospective anchor/strategic investors to submit their competitive bids.

Affiliate Company ("AC")

An operating public sector company, incorporated in accordance with the provisions of the Privatization Law 203 of 1991. Majority ownership is controlled by a Holding Company

Anchor Investor

A business enterprise that strategically invests in and actively participates in the management and operation of companies that are targeted for acquisition.

Central Auditing Authority ("CAA")

A governmental agency that is responsible for the external auditing of public sector companies.

Confidentiality Letter

Prior to allowing the representatives and advisors of the prospective anchor/strategic investors access to the Data Room and proprietary and sensitive information relating to the affiliate company, the Holding Company will enter into a confidentiality agreement with the prospective investors. The object of such an agreement is to protect secret and sensitive company information.

Data Room

In addition to the information provided to the bidders in the Information Memorandum, additional information is being made available for inspection by short-listed bidders in a Data Room located at the offices of the AC, to assist the prospective strategic investors in the valuation process. The Data Room contains original records, books, documents and data relating to the AC.

Discounted Cash-Flow

An analysis used to estimate a company's value based on the *Present Value* of its forecasted cash flow.

Due Diligence

The process of a detailed and a comprehensive audit and verification by the representatives and professional advisors of prospective investment advisors of information and data relating to the AC on sale.

Evaluating Bids

Prior to receipt of bids, the HC forms a Bid Evaluation Committee, which will review all the bids received and make recommendations to the HC Board of Directors on how to proceed.

The HC should seek at this stage to reduce the number of participants to limited number of preferred bidders, who would be allowed to gain access to further confidential information in the Data Room.

Fact Sheet

A short summary of the financial position and result of operations of the AC over the recent two to three years.

Final Negotiations

If there are major discrepancies and other matters which could arise during the process of due diligence inspections, the prospective investor discuss them, and should some amendments be introduced as a result thereof, such amendments should be made to the draft contract.

Holding Company (“HC”)

A holding company incorporated in accordance with the provisions of the privatization law 203 of 1991. Holding Companies substitute the Public Sector Organizations. The holding company was purposefully created and organized with the specific objective of preparing the ACs under their umbrella, temporarily brought under their ownership, for privatization and sale.

Information Memorandum

A private placement sales document which contains detailed information relating to the AC's history, financings, operations, markets, facilities, etc.

Public Sector Company

A company which is majority owned by a state or a governmental body.

Solicited Offer

An offer made by a prospective investor in response to an organized public invitation to bid.

II. INTRODUCTION

What is a Data Room?

Beside the initial information provided prospective strategic investor bidders at the start of the tendering process, additional information is afforded the Preferred Bidders' advisors through accessibility to all the original records, books and documents relating to the Affiliate Company ("AC"). The Data Room is a designated separate physical space within the premises of the AC.

A Data Room houses, in a proper Librarian setting, all the original records, books and documents (including the different types of contracts and outstanding agreements) relating to the AC subject of sale. This entails the whole process of gathering, grouping, classifying and administering the entry and access to all the records, books and documents relating to the AC.

What is the function of a Data Room?

The grouping of all relevant original documentation relating to an AC, subject of sale, assists the Preferred Bidders' advisors in carrying out *Due Diligence* in the most efficient manner, by making available to them all the information needed for inspection in one well attended central setting. This would assist the Preferred Bidders in the preparation of final bids for the purchase of the AC on sale.

Exhibit I, *A Flow Diagram of the Tendering Process*, illustrates the centrality of the Data Room in the process of tendering for the successful sale of an AC. As the flow diagram shows, this is evident in the sub-processes in the blocks entitled: *Bidding Process* and *Conclusion of Sale*.

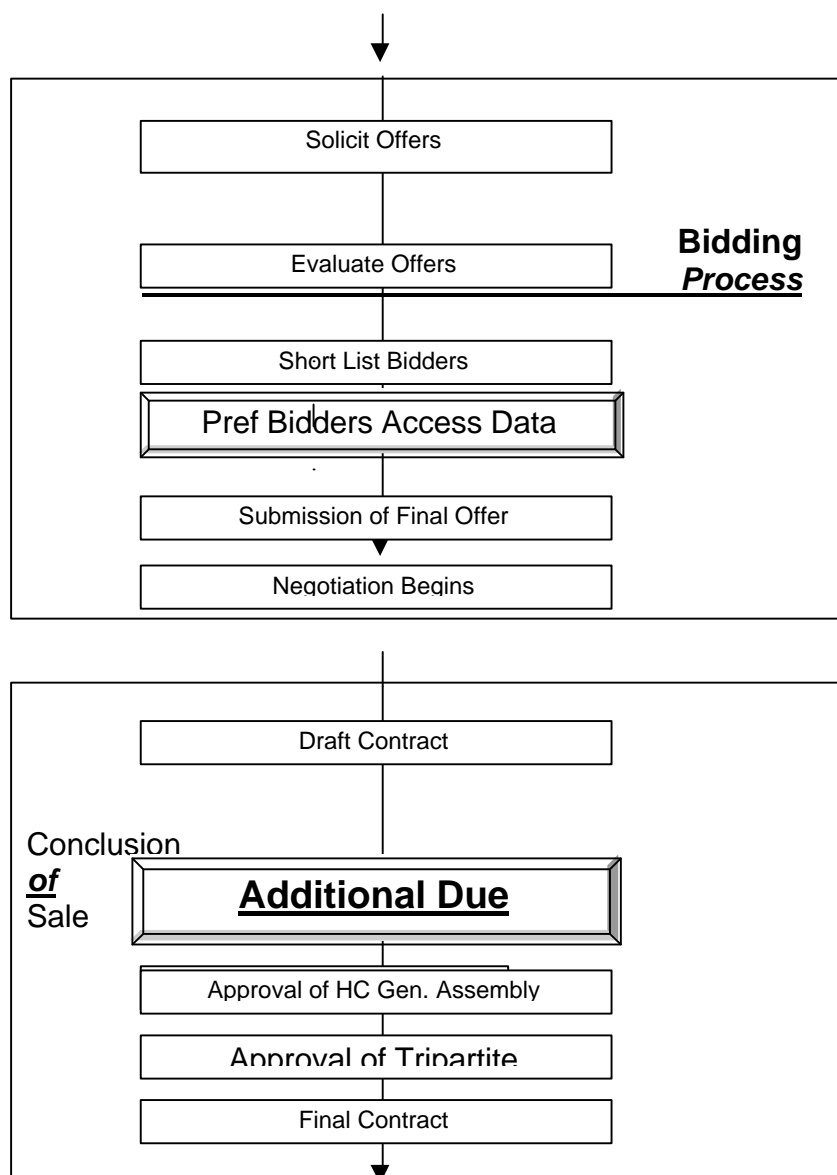
What are the contents of a Data Room?

The Data Room will include a compilation of all the legal, financial, accounting, commercial, technical and administrative records, books and documents relating to the AC's operations. Appendix-I outlines the standard documents found in a model Data Room. The contents vary from one company to another depending on the type of industry and the particulars of the company. Notwithstanding requirements of full disclosure, the privatization executive at the HC reserves the right to add to, remove or revise any documents in the Data Room. Documents may not be removed from the Data Room. However, copies of certain of the documents may be requested from the Data Room manager. ***The Privatization executive at the HC is to determine the documents the prospective investor may copy.***

(A few lines in this section are drawn from an Arthur Andersen Document
Prepared for the MPE/PEO in an earlier project)

Exhibit I

A Flow Diagram of the Tendering Process



III. THE FLOW PROCESS FOR CREATING A DATA ROOM

Exhibit II illustrates the flow process for creating a model Data Room.

A. Designating the AC as a candidate for privatization

It is considered premature to commence the steps to creating a Data Room before a definite plan to privatize the Affiliate Company under consideration, as evidenced by the final approval of the general Assembly of the HC.

B. Launching of a comprehensive financial and technical audit

It is ideal that upon the stamping of the seal of approval by the general assembly of the HC to privatize the Affiliate Company, that a thorough and a comprehensive external financial and technical audit be conducted on the company by the Central Auditing Authority (“CAA”), especially if more than three months have elapsed since the last audit.

Undertaking this audit with the view of preparing the company for privatization could result in a more keen examination of the available information, and the verification of data to assure complete and detailed representation of the facts.

C. Taking a decision to create a Data Room

Data Rooms are temporary arrangements to facilitate the process of due diligence during the tendering period to sell the company, and thus expedite the process of its privatization. The creation of a stand-alone data room could commence as early as two months prior to

advertising for the invitation to tender. On the assumption that the tendering period and conclusion of sale could extend additional three months, then the separate existence of a data room, as a standalone, could vary between four to five months.

Upon the conclusion of sale, all the records, books and documents then would revert to their original locations at the different departments within the company.

D. Produce a checklist of the documentation to be contained in the Data Room

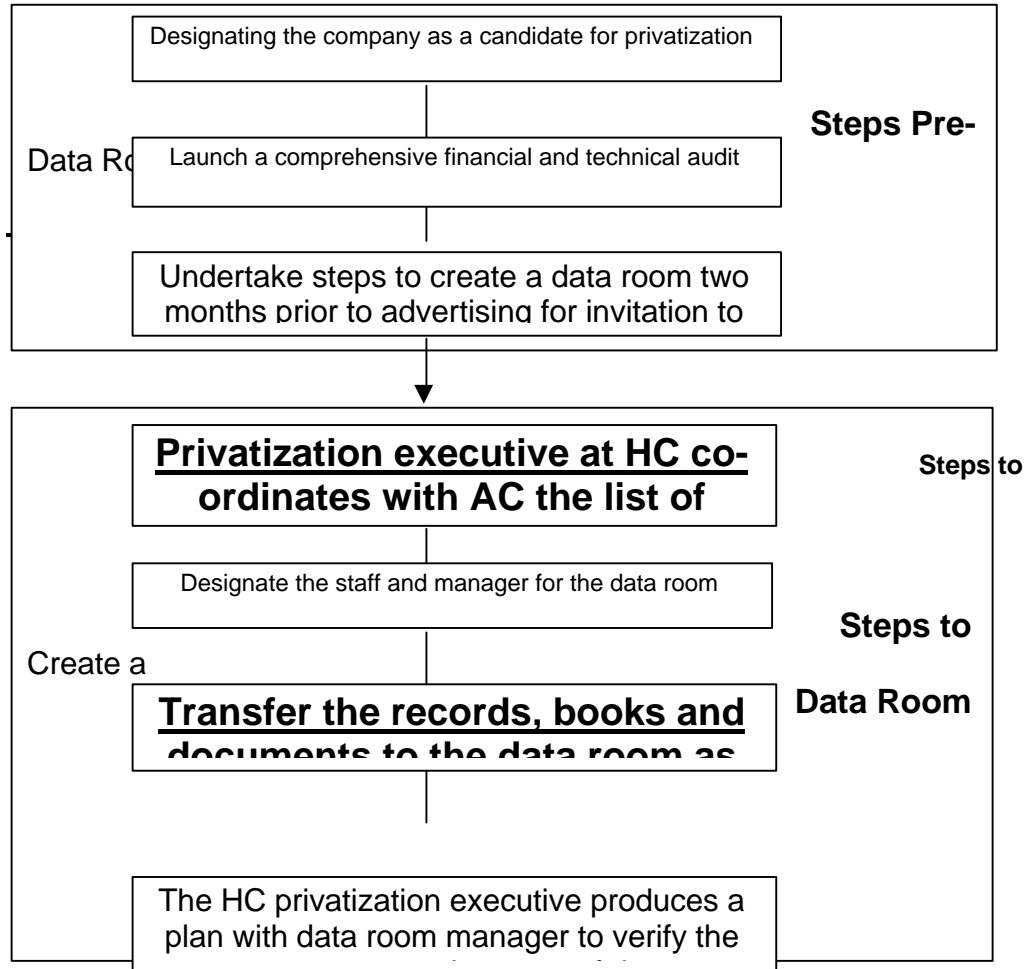
The privatization executive of the Holding Company calls for a meeting with the management of the Affiliate Company to discuss and produce an exhaustive checklist of all documentation to be compiled in the data room. It is preferable to design the appropriate formats to compile the necessary data and information to take account of all the documents to be included and a very orderly manner.

It is preferable to design the formats so it would make for easy codification and classification of the designated documents in a manner that would correspond to their proper filing and shelving system, and that would make for easy retrieval and reference.

The formats also, with the thought-through codification system, should facilitate their entry into a dedicated personal computer that would be located at the data room proper, and for the sole use of the manager and staff of the data room.

Exhibit II

The Flow Process for Creating a Data Room



E. Designate and Appoint the Manager and the Staff for the Data Room

Upon the decision to create a data room, the privatization officer at the Holding Company will coordinate with the management of the Affiliate Company to designate and appoint a dedicated manager, and a dedicated staff for the data room.

Given the fact that the duration of the data room is for only a few months, and given the fact that the manager and the designated staff members of the data room have to be very knowledgeable and quite conversant with the details pertaining to the different respective documentation in the data room, and the history of the company, it is practical for these personnel to be employees of the company.

The manager and the staff of the data room would be seconded “on loan” to the data room to assist in its creation and operation. The manager should be a senior staff- member within the company, and someone who commands respect, authority and wide knowledge of the various aspects of the company’s operations and businesses.

The other staff members, two to four, depending on the size of the task, would oversee the records, books and documents in the data room that correspond to their areas of specialization. The legal documentation, and personnel would preferably be attended by a staff member of the legal department in the company. Finance and accounting would be overseen by a staff member who works in the finance and accounting department. An engineer/architect would oversee the documentation relating to the technical and production aspects of the operations of the company.

Finally, it would be preferable, naturally depending on the size and level of sophistication of the company’s operations, a computer operator could be employed to enter all the

documentation to be housed in a data room into a personal computer. This same person could participate in the design and implementation of a librarian-like codification and classification system for the entry of the names, types and number of the documentation to be stored in the data room.

During the existence of the data room, the manager and staff of the data room report to and are accountable to the privatization executive at the Holding Company.

Upon the conclusion of sale, the manager and the staff of the data room revert to their original positions in the company where they served prior to the creation of the data room.

F. Designate and allocate the space within the AC offices, and plan the layout, the storing system and all attendant logistics for a stand-alone Data Room

The function of a data room is in many ways similar to that of a library. The data room is sought by individuals who want to conduct research. These individuals are often specialized advisors to the preferred bidders, the prospective strategic/anchor investors. The research they conduct is termed in the jargon of investment banking and privatization experts: *due diligence*.

These experts and advisors show up in the data room in droves of as few as 3 people at a time, and sometimes as many as 6, 7 or 8, depending on the size, nature of the transaction and the type of investor.

Sometimes as many as 7 or 8 prospective bidders are short listed as Preferred Bidders with right of access to the data room. This would mean that sufficient space, proper seating, proper filing and retrieving systems, proper lighting and acceptable furniture, desks, tables, photocopying and writing facilities ought to be afforded the users of the data room.

The privatization executive at the holding company would need to plan, before hand with the management of the affiliate company, the space layout, and the logistical requirements for the data room. Each situation warrants its own requirements for space and logistics. The privatization executive from the holding company would decide with the management of the affiliate company the more optimal utilization of space and available resources towards the realization of the objective for which the data room is intended.

Moreover, organizing and scheduling visits by the Preferred Bidders' advisors becomes a necessary task in order to avoid overcrowding, and undesirable untimely interaction between competing bidders.

G. Transfer the records, books and documents to the designated area for a data room

Based on the aforementioned plans, the designated manager of the data room and his staff, under the auspices of the privatization executive at the holding company, and in close coordination with the management of the affiliate company, oversee the transfer of all relevant documentation for the purpose of due diligence, from their respective places in the various departments at the company to the designated space for the data room.

Detailed and exhaustive checklists containing all the documentation to be transferred to the designated space of the data room are to be prepared properly, with accompanied signed minutes of meetings evidencing the transfer of custody of such documents from their respective departments to the custody of the care takers of the data room.

The privatization executive at the holding company, in coordination with the management of the affiliate company is responsible for issuing the manager of the data room with set of instructions and the procedures to duly carry out this particular exercise.

H. Producing a plan for the verification of the accuracy, completeness and timeliness of the available data in the Data Room

The purpose of the data room is to expedite the process of the sale of an affiliated company by facilitating the process of due diligence to be carried out by the advisors of the preferred bidders.

One aspect of expediting the process of sale is to provide to the prospective investor's advisors all the information they need to examine and inspect, very accurately, completely and in good up-to-date timeliness.

Inaccurate, incomplete and not up-to-date information could very well defeat the purpose of creating a data room in the first place. This could result in unnecessarily prolonging the process of due diligence, delaying the consummation of the transaction, and in freezing significant funds in retention and escrow accounts. In extreme situations this could result in the cancellation of the deal and failure of the sale. However, to provide investors' representatives with unverified inaccurate information could be tantamount to a fraudulent act of misrepresentation for which the management of the company could held liable.

Often investment promoters/advisors acting on behalf of the seller tend to absolve themselves from the rise of eventualities of misrepresentation by obligating the management to sign a form of a Management Representation Letter, very much along the lines of what is illustrated in Appendix-II.

As the text of the letter amply demonstrates, the management is under the obligation to provide accurate, complete and an up-to-date information and data to prospective bidders.

Moreover, and as a general rule, any information provided to anyone prospective bidder, should, by for reasons of transparency, be provided to all prospective bidders.

The privatization executive at the holding company needs to produce, in coordination with the manager and the staff of the data room, a plan for the verification of the accuracy, completeness and timeliness of the data and information contained in all the records, books and documents in the data room. Besides, the plan should review the authentication and the inclusion of all the modifications that might be warranted by changing events, and that often touches on the various aspects of a company's operations over the expanse of a long stretched history.

Appendix III throws some light on some examples of the kind of verification, a kind of a mini internal due diligence, that can be conducted to try make sure that the information and data are accurate, complete and are up-to-date.

VI. ORGANIZATIONAL STRUCTURE OF A DATA ROOM

As Exhibit III illustrates, the organization of the Data Room is headed by the manager of the Data Room. He has direct authority over a specialized staff of three to four people. They are the staff member in charge of legal matters; the staff member in charge of financial matters; and the staff member in charge of technical information and data. A librarian/ computer operator oversees the organizing, codifying, and classifying all kind of records, books, documents and files. He/she also operates the computer as an aid tool to enter the information that would facilitate the filing and retrieving of the stored more readily and more orderly.

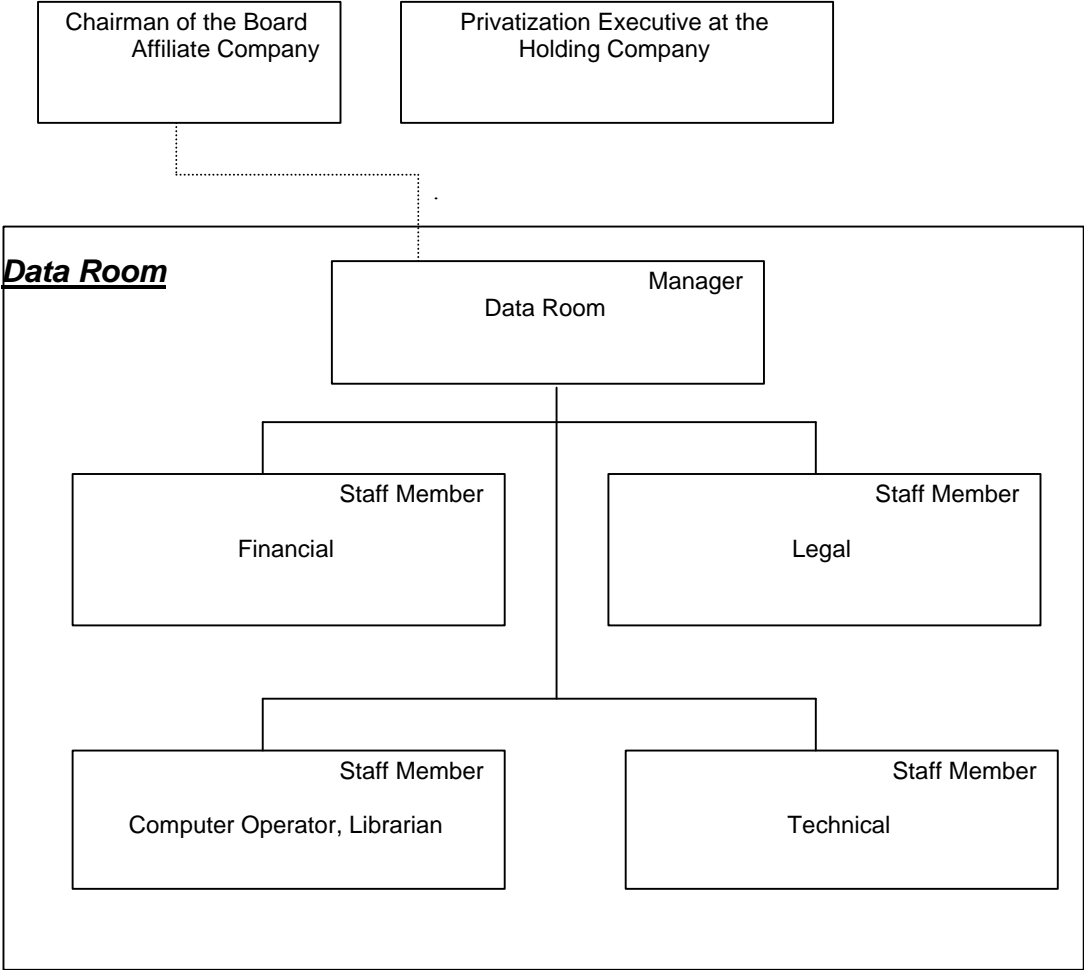
The manager of the Data Room reports directly to the privatization executive in the holding company, during his temporary assignment as manager of the Data Room. He/ she coordinates with the chairman of the board of the affiliate company in all matters relating to keeping the documentation and availability of all information and data relating to the affiliate company in good order.

The manager of the Data Room should be an executive of the affiliate company with well-rounded knowledge of all aspects of company operations. He/ she should be a good public relations person who would confidently call on all the necessary governmental bodies, agencies and various specialist authorities, and other executives of the affiliate company, if needed to put in good order all the information to facilitate and expedite the process of due diligence.

The manager of the Data Room is assisted in the carrying out of each specialized work by the staff member specialized in that respective area of concern.

Exhibit III

Organizational Chart for the Data Room



V. MODUS OPERANDI: Gaining Access To The Data Room

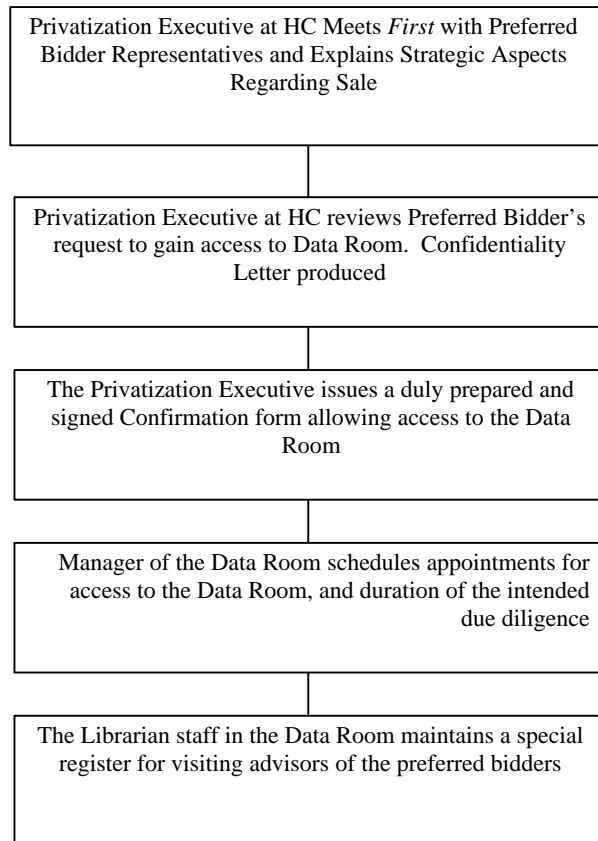
Exhibit-IV illustrates, in a flow diagram fashion, the procedure for the representatives and the professional advisors of the preferred bidders to gain access to the Data Room.

- *Firstly*, the duly authorized representatives of the preferred bidders need to start with the privatization executive at the Holding Company. He/she would discuss with the bidders' representatives strategic matters relating to the sale of the affiliate company subject of the tender. Fact Sheets could be handed out during this meeting. The privatization executive at the holding company, in consultation with the chairman of the board of the holding company and the tender evaluating committee and other executives determine the short list of preferred bidders, and who should gain access to the Data Room for the conduct of due diligence.
- The privatization executive at the Holding Company directs the preferred bidders' advisors to issue the Holding Company with a duly executed "Confidentiality Letter," in the content and form that satisfies the requirements of the Holding company. Appendix-IV suggests some points to include in such a letter.
- Once fully satisfied with the legal enforceability of the delivered "Confidentiality Letter," the privatization executive at the Holding Company will then issue the preferred bidder representatives/professional advisors with a "Confirmation," allowing them access to the data room. Such a confirmation would be typed on a form carrying the letterhead of the holding company. A reference number traceable to a central register of outgoing mail, should be indicated on such a form. The full names, I.D. numbers of the persons allowed access to the Data Room should be provided in the Confirmation, along with the professional firms they are employed by, and the preferred bidder that they are representing in this assignment of due diligence.
- It is preferable that a copy of the Confirmation is kept by each representative authorized access to the Data Room. The original of the Confirmation is sent to the Manager of the Data Room.
- The manager of the Data Room schedules appointments for the representatives of the preferred bidders. The Data Room office hours very much follows those of the Holding Company, usually from 9:00 a.m until 5:00 p.m.
- The prospective investor representatives/advisors need to show the written "Confirmation" in order to gain access to the Data Room. The staff member designated as a librarian/computer operator should attend to the function of recording in a special register the visitors particulars, the written Confirmation reference number, verifying the identity of the visitor to conform to that in the written Confirmation, as well as the time of entry and exit.

Exhibit IV

A Flow Diagram

Modus Operandi: *Gaining Access to the Data Room*



Appendix – I

The Contents of a Data Room

A Data Room generally contains the following standard records and documents:

Legal:

- Articles of Association.
- Key customer contracts.
- Leasing contracts.
- Employees contracts
- Minutes of Board of Directors meetings (including general assembly where relevant).
- Intellectual property, trademarks, copyright agreements, permits and licenses.
- Management service contracts.
- Details of any outstanding or pending litigation.
- Details of joint venture agreements, franchises, agencies or partnerships between the AC and third other parties.
- Commercial registry.
- Deeds of land and buildings ownerships.
- All contractual agreements to which the AC is a party.
- The AC's by-laws.
- Evidence of establishment of the Union of Shareholding Employees.
- Management services contracts.
- All legal books.
- Insurance policy contracts.
- Loan agreements, and all financings agreements.
- Personnel policies.

Financial & Accounting:

- Tax cards.
 - Tax returns records for the past five years, and current status of outstanding tax returns (all taxes pertaining to income, sales, stamp duties, custom duties, real estate, etc.).
- Complete audited historical financial statements (balance sheet, statement of profit and loss, statement of cash flow, etc.) for the last five financial years.
- A list of main suppliers and distributors.
- Annual budgets for the past five years, and the projected for the next three years.
- A recent business plan.
- Capital commitments and percentage of completion of works in progress.
- List and details of guarantees and all off-balance sheet commitments.
- Fixed assets register.
- Insurance policies record.
- Social insurance payments receipts for the past five years, and status of outstanding payments.
- Inventory and account receivables records.
- Fact sheets.
- Import and export cards.

Technical:

- Operations manual.
- Plant layout drawings.
- Land layout drawings.
- Schematics of production processes.
- Process flow diagrams.
- Equipment layout drawings.
- Technical specifications of machinery and equipment.
- Structural drawings.
- Electromechanical drawings.
- Control systems and electronic networks drawings and schematics.
- Quality assurance manual.
- Maintenance manual.
- Products designs and specifications.
- Production schedules.
- Environmental studies and regulations en force.

Appendix II

A Sample Management Representation Letter

The management of the holding company of the affiliate company subject to sale, customarily provides the investment promoter with a letter that would exonerate the investment promoter from the consequences of any misrepresentation of the facts as provided by the management. Such facts often find their way to the Information Memorandum. The text of such letter that squarely places the onus of misrepresentations on the shoulders of the possessor and processor of the information, the management of the holding company, partly read as follows:

- The management is responsible for the information which has been used by the investment promoter in the preparation of the Information Memorandum. This includes all historical and forecast financial information and the information relating to the Company's business.
- The management attests that it has made available to the investment promoter all the relevant financial records and related data.
- The management has no plans that may materially affect the value of assets and liabilities except as disclosed to the investment promoter.
- The management attests that the accounting records and all the information provided by management accurately and fairly reflect the transactions and the financial position of the company.
- The management further attests, that the company has satisfactory title to the owned assets, unless otherwise indicated, and that management has sufficiently disclosed all encumbrances to land.
- The management attests that the management is not aware of any material outstanding issues or matters which require disclosure by the management.

Appendix III

Verification of Information and Data for Accuracy,

Completeness and Timeliness

The privatization executive at the holding company should create a plan, in close coordination with the manager and the staff of a the data room, to review all the different documentation contained in the data room, to verify their authentication, accuracy and suggest recommended actions to bring them to good order to reflect a true representation of the financial position, and the outstanding commitments and obligations of the company.

Below are some examples of certain matters to be addressed, and some of the comments and suggestions for verification.

Valuation:

- The designated Quadrite Committee examines the validity and accuracy of valuation of the assets/company to be privatized. However, nothing in Law 203 of 1991 addressed the issue of handling disputes.
- The prime minister issued a decree, No. 2781, on 20 September, 1999, adding an addendum to the executive regulation 26 of Law 203. The new addendum reverts the final decision to rule over the final valuation to the general assembly of the holding company that would hold an extraordinary meeting.
- The introduction of the above addendum removed a lot of confusion, especially with regard to the recalcitrant attitudes and interpretations over determining valuation by the Central Auditing Authority (CAA).
- Another source of confusion with regards to valuation is the multiplicity of accredited methods of valuation. There is no single method accredited as the standard. The two commonly used methods are: Discounted Cash Flow method (referred to, commonly, as *profitability*) method, and the Adjusted Replacement Value.

Articles of Association

- The Articles of Association of the company candidate for privatization would need to be amended to conform to Law 203.
- Due to the nationalization laws, and the other ensuing company, investment and commercial laws, the Articles of Association of some affiliate companies are not amended to accommodate the new changes, so that the Articles of Association as they stand do not prepare the company for privatization, and do not, as in some cases, reflect the actual activities of the company.

Commercial Registration

- Updating the Commercial Registry so it contains clear references to the Company's branches, industrial plants, all the current activities of the company, and add amendments to reflect the true reality of the company in these regards.

- Creating in certain situations, if necessary, a commercial registry, if one did not exist, for a stand-alone branch, subsidiary or a factory that is a candidate for privatization, as the situation of a company like Beni Sweif Cement warranted to allow for the completion of its sale and privatization.
- Include a statement that empowers the company to sell its assets.

Tax Cards

- Should exist and be maintained up-to-date.

Import & Export Card

- Should be valid, and current.
- Specify the goods to be imported or exported in an itemized fashion if needed.

Licenses, Franchises and Permits

- Valid up-to-date licenses, permits and franchises relating to all the activities carried out by the company, and concessions and right of uses granted it by the authorities or other third party commercial enterprises.
- Verification of the right of transferability and assignability to the prospective investor of such licenses, franchises and permits.

Litigation

- Identification of all the outstanding legal cases by or against the company.
- The amounts in dispute subject of litigation could have a great impact on the realizable price of the company.
- Some companies targeted for privatization treat litigation matters very casually, and no appropriate mechanism in place for a timely follow-up. An appropriate weekly reporting system should be established, to check on the status of outstanding cases for and against the company.
- The manager of the data room should co-ordinate closely with the privatization executive of the holding company to design and implement such a reporting system, and follow up on the status of litigious cases.
- Unsettled litigious matters if not duly identified and quantified before hand, wind up on the books of the acquirer since the acquiring company is not a natural person.
- Failing to duly identify outstanding litigation could potentially criminally implicate the seller as committing a fraudulent act of misrepresentation.
- It is important to note in this vein that the prospective investors mobilize for the purpose of conducting due diligence, different experts from renown international law and auditing firms. *The message is for the privatizing company to identify problems early on, and work on solutions and face up to their responsibilities as sellers in this regard before the advisors of the prospective investors start their due diligence work.*
- However, even before the taking the decision to create a data room, it is recommended that the company should create a unit within the company that would be solely dedicated to administering *litigation* matters. An information system is suggested to be established with the mechanics to automatically update on a timely basis, weekly if need be, the status of outstanding cases, and accountability for

timely follow up. The CEO of the company should be kept informed in a routine fashion, on a regular periodical basis of the status and progress of each case.

- In the words of a prominent judge, who was instrumental in the promulgation of many commercial, company, investment and privatization laws, the companies are to blame for neglecting to actively follow up on outstanding legal cases at the courts. He admitted that courts can be slow in processing commercial cases, however, he strongly admonishes companies to actively follow up on these cases, and was convinced the process would be dramatically expedited as a result thereof. He gave examples of companies losing out on litigation after courts have ruled in these companies favor, just because of gross negligence of failure to update their information and a proper timely follow up. This resulted in some cases the foregoing of substantial funds.

Taxes

- The manager of the data room of the affiliate company earmarked for privatization ought to check the company's tax situation and tax returns with the relevant and competent tax authorities, and obtain a statement to the effect that all taxes are paid to-date.
- The affiliate company subject of sale could be liable for all kind of outstanding taxes such as: income, stamp duty, sales, custom duties, and, very importantly, real estate taxes.
- The interest due on unpaid taxes could compound into significant amounts with the passage of time.

Deeds of Ownership

- Critical documents without which no sale can take place.
- Because of Nationalization in 1961, the ownership deeds and other pertinent ownership documentation may not be in proper order.
- This subject should receive the utmost attention and action by the privatization executive in close cooperation of the manager of the data room. They should personally oversee the verification of the accuracy, authentication, and planned follow up to put in good order all the deeds of ownership of company's assets, mainly the real estate. The plan should entail a provision for field inspection to ensure conformity of the real with what exists in the company records. In particular, the company inspectors should be wary of infringements on property rights brought about by easements and rights of ways and other myriad contingencies not accounted for in the company's records.

Social Insurance Liabilities

- They could represent off-balance sheet liabilities, and can be substantial
- As with taxes, certifications to the effect that all social insurance liabilities have been timely met and paid, need to be obtained from the competent authorities.
- It is useful to reiterate on this occasion that the full readiness of the prospective investor to examine every detail, and for the selling company to do things right from the start would reflect favorably on its credibility and the successful consummation of the sale.

Insurance Policies

- Ensure that all relevant types of insurance policies (fire, buildings, theft, etc.) are in good order and are enforceable.
- Verify that all premiums due should be promptly paid, and any outstanding disputes urgently addressed.

Contractual Obligations

- All kinds of contractual agreements and obligations to which the company is a party, must be very clearly and openly disclosed.
- The company should freeze and refrain of causing any changes in its contractual obligations starting the date the Tender for the sale of the company is announced.

The Environment and Conditions of Labor

- The manager of the data room should initiate action, in full co-ordination with the privatization executive, to reconcile the company's situation with regards to observance of the laws and regulations en force that pertain to the protection of the environment, especially Law 4.
- Foreign investors are extremely sensitive to the issues of environmental protection. The company on sale should not take its adherence to environmental protection laws and regulations lightly.
- Labor conditions, observing the protective laws to refrain from employment of child labor, and other related social issues should be fully observed by the company being prepared for sale.

Trademarks & Intellectual Property

- Insure the proper registration and validity of the trademarks, patents and all other intellectual properties in a manner that protects, unequivocally, the rights of the company at all times.
- The manager of the data room of the affiliate company on sale ought to designate one of his staff members, preferably legal, to administer this function.

Suppliers, Agencies & Distributors

- The manager of the data room should oversee that the affiliate company subject of sale should dispose at all times of a register that lists, up-to-date, in very clear terms, the agencies that the company is party to, the list of main suppliers and list of all the distributors.

Inventory

- Establish a realistic basis for the valuation of the inventory. Book value could be non-representative of the market reality.

Leases

- Certain special attention should be paid to the validity of lease contracts and their enforceability.
- Certain leases could represent special values to some companies by virtue of locations, durations and right of use. These should be checked regularly, and administered closely by the company which otherwise might find itself in default, thus foregoing a valuable intangible asset. The manager of the data room needs to check for the validity of all leases.

Company By-laws

- Very special attention should be paid to the company's by-laws. The company should try to reconcile its by-laws, without prejudice to its binding obligations, especially to its labor force and employees, with the requirements that would facilitate the sale, and not place unnecessary undue burden on the acquiring party. The manager of the data room and his legal staff member, in close coordination with the privatization executive, should see to this.
- The company should refrain from changing the by-laws intentionally in advance of sale, in a manner to pass additional uncalled for benefits to the employees. No changes should be introduced to the company's by-laws effective the date of announcement for invitation to tender.

Company's History

- A chronological narration that takes full account of all the events and developments that might have affected the statuses of the company, and those that have effected it materially since the company's inception to-date, especially in view of transfer of ownership and changing of legal situation, must be meticulously recorded and updated in accordance with original documentation.

Financial Statements

- The manager of the data room assisted by the financial staff member, should verify, in coordination with the company's financial manager, that all the historical financial statements for the past five years are complete, and that they are duly audited.
- The financial statements should be produced to General Accepted Accounting Standards, and the requirements of the CAA.

Information Memorandum

- All the information to be contained in the Information Memorandum will originate from the records, books and documents in the custody of the data room.

Appendix IV

A Sample Text of A Confidentiality Letter

To enable serious prospective investors to ascertain whether they wish to invest in the affiliate company subject for sale, the advisors of such investors would need to gain access to all kinds of confidential and proprietary information relating to the affiliated company.

Prior to allowing the investors' representatives to gain access to the Data Room, the privatization executive of the holding company would need to be served with a duly executed confidentiality letter from the investor. The text of such a letter reads in essence as follows:

- That all information provided, whether written or oral, including among others all technical and business information relating to design, engineering, manufacturing, marketing and distribution of products relating to the company, are confidential and are the property of the affiliate company.
- The prospective investor solemnly attests to maintain the information provided his representatives in confidence, and use it only for the purpose of considering whether to invest in the equity of the affiliate company, and not to make any commercial use of it, or use the information for the benefit of the investor or to the benefit of a third party.
- The prospective investor undertakes not to copy, reproduce or distribute any part of the information, except where it is warranted for the purposes of evaluating the affiliate company. However, any copies, reproductions remain the property of the company.
- The prospective investor undertakes to only release the information in confidence to employees, officers, directors, agents and professional advisors, whose duties justify the need to know. The prospective investor shall undertake that all such persons indicate their agreement that they are bound by the terms of the letter of confidentiality prior to being shown or exposed to the information relating to the affiliate company. The prospective investor stands ready to produce such agreement if requested by the affiliate company's representatives.
- The confidential information shall be disclosed in documentary form marked confidential.
- The prospective advisor, or any of his/her representatives or advisors shall not approach, without the written consent of the holding company, any person who is deemed connected in any way with the affiliate company or its suppliers other than the designated privatization staff, and the advisors who have been nominated by the holding company for the purpose of discussions with the holding company.
- At any time, and upon the request of the holding company or on conclusion of the evaluation by the prospective investor of the affiliate company, the prospective investor confirms that he/she will return or undertake to return of each and every copy of information given by the holding company, and within five working days of demand.

(With the courtesy of Arthur Andersen)